

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALAA ELKHARWILY,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

CASE NO. C20-5505 BHS

ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND

This matter comes before the Court on Plaintiff Alaa Elkhawily's ("Plaintiff") motion to remand. Dkt. 26. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL AND FACTUAL BACKGROUND

On May 1, 2020, Plaintiff filed a complaint against numerous defendants in Pierce County Superior Court for the State of Washington. Dkt. 1-2. Plaintiff alleged that he was a resident of Washington. *Id.* ¶ 1.

On May 29, 2020, Defendants Bennett Bigelow & Leedom, P.S., Bruce Megard, and Erin Seeberger ("BBL Defendants") removed the matter to this Court alleging that

1 Plaintiff is domiciled in and a citizen of Minnesota and asserting diversity jurisdiction.
2 Dkt. 1, ¶ 5. They also attached numerous exhibits showing that Plaintiff has previously
3 used a Minnesota address and deposition testimony from May 2016 wherein Plaintiff
4 stated that his main residence was in Minnesota. Dkt. 1-3.

5 On June 29, 2020, Plaintiff filed a motion to remand and submitted a declaration in
6 support of the motion. Dkts. 26, 26-1. Plaintiff declares that he is a citizen of and
7 domiciled in Washington since 2016. Dkt. 26-1 at 1. He claims that his wife resides at
8 his Minnesota address and that he only uses that address to receive mail. *Id.* at 2. He
9 states that he has been a registered voter only in Washington for the last three years. *Id.*
10 Finally, he submitted his Washington driver's license, Washington voter identification
11 card, and Washington registration for his current vehicle. *Id.* at 4–8.

12 On July 20, 2020, the BBL Defendants responded. Dkt. 48. On July 24, 2020,
13 Plaintiff replied. Dkt. 56.

14 II. DISCUSSION

15 Under 28 U.S.C. § 1441(a), defendants may remove any civil action brought in
16 state court that could have been originally brought in federal court. Federal courts have
17 original jurisdiction over, *inter alia*, cases where there exists a complete diversity of
18 citizenship and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a);
19 *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Defendants who remove cases on the
20 basis of diversity jurisdiction must prove, by a preponderance of the evidence, that
21 removal is proper. *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599
22 F.3d 1102, 1107 (9th Cir. 2010). There exists a “strong presumption against removal

jurisdiction,” which “must be rejected if there is any doubt as to the right of removal in the first instance.” *Id.* (internal quotation omitted); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (courts should “strictly construe the removal statute against removal jurisdiction”); *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941) (“Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which [§ 1441] has defined.”).

“To demonstrate citizenship for diversity purposes a party must (a) be a citizen of the United States, and (b) be domiciled in a state of the United States.” *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986). The Ninth Circuit has established several principles to guide the inquiry of where a party is domiciled:

First, the party asserting diversity jurisdiction bears the burden of proof . . . Second, a person is ‘domiciled’ in a location where he or she has established a ‘fixed habitation or abode in a particular place, and [intends] to remain there permanently or indefinitely.’ . . . Third, the existence of domicile for purposes of diversity is determined as of the time the lawsuit is filed . . . Finally, a person’s old domicile is not lost until a new one is acquired . . . A change in domicile requires the confluence of (a) physical presence at the new location with (b) an intention to remain there indefinitely.” . . . Courts in other jurisdictions have recognized additional principles relevant to our present analysis. The courts have held that the determination of an individual’s domicile involves a number of factors (no single factor controlling), including: current residence, voting registration and voting practices, location of personal and real property, location of brokerage and bank accounts, location of spouse and family, membership in unions and other organizations, place of employment or business, driver’s license and automobile registration, and payment of taxes . . . The courts have also stated that domicile is evaluated in terms of ‘objective facts,’ and that ‘statements of intent are entitled to little weight when in conflict with facts.’

Id.

1 In this case, the BBL Defendants argue that they are entitled to the presumption
2 that Plaintiff was domiciled in Minnesota. Dkt. 48 at 7 (“Plaintiff has the burden to
3 produce evidence that he changed his domicile (i.e., not just his residence) to
4 Washington.”). They, however, fail to submit uncontested facts establishing Plaintiff’s
5 prior domicile in Minnesota and, unlike the defendant in *Lew*, Plaintiff has not conceded
6 a prior domicile. *See, e.g., Johnson v. Mitchell*, No. CIV S-10-1968-GEB, 2012 WL
7 691765, at *5 (E.D. Cal. Mar. 2, 2012), *order clarified*, No. CIV S-10-1968 GEB, 2012
8 WL 913079 (E.D. Cal. Mar. 16, 2012) (“Simply put, plaintiff cannot shift the burden of
9 production to these defendants on the basis of a presumption as to ‘established domicile,’
10 because no such domicile has been established. Instead, in this case, the burden of
11 production, as well as the burden of persuasion, remain squarely on plaintiff.”).
12 Therefore, the Court concludes that the BBL Defendants have failed to establish an
13 entitlement to the presumption that Plaintiff was domiciled in Minnesota.

14 Turning to facts relevant to Plaintiff’s domicile when he filed this complaint in
15 May, the overwhelming majority of facts demonstrate a domicile in Washington. While
16 the BBL Defendants point to Plaintiff using his Minnesota address on his original
17 complaint, Plaintiff has amended that address to a Washington address. Plaintiff has
18 submitted his Washington driver’s license and voter registration, which the Court accepts
19 as persuasive evidence of his domicile in Washington. Plaintiff also explains that he can
20 own property in numerous states, have medical licenses in numerous states, and that
21 some of his banks do not even have branches in Minnesota. The BBL Defendants fail to
22 submit evidence to undermine these facts and assertions. Instead, they rely on outdated

1 evidence and inferences therefrom. As such, they fail to meet their burden to overcome
2 the strong presumption against removal jurisdiction. *Geographic Expeditions*, 599 F.3d
3 at 1107.

4 The BBL Defendants request jurisdictional discovery in the event that the Court is
5 inclined to grant Plaintiff's motion. Dkt. 48 at 7–8. The Court declines this request
6 because they may conduct such discovery in Plaintiff's chosen forum and, if that
7 discovery uncovers facts relevant to Plaintiff's domicile, they may remove the matter
8 again. 28 U.S.C. § 1446(b)(3) ("a notice of removal may be filed within 30 days after
9 receipt by the defendant, through service or otherwise, of a copy of an amended pleading,
10 motion, order or other paper from which it may first be ascertained that the case is one
11 which is or has become removable.").

12 Finally, Plaintiff seeks sanctions for the BBL Defendants' alleged violations of
13 Fed. R. Civ. P. 11 and costs and fees incurred as a result of the improper removal under
14 28 U.S.C. § 1447(c). The Court denies both requests because Plaintiff has failed to
15 establish that either recovery is warranted.

16 **III. ORDER**

17 Therefore, it is hereby **ORDERED** that Plaintiff's motion to remand, Dkt. 26, is
18 **GRANTED**. The Clerk shall terminate all pending motions and REMAND this matter to
19 Pierce County Superior Court.

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1 Dated this 24th day of September, 2020.

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4 BENJAMIN H. SETTLE
5 United States District Judge
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